

Office of the State Auditor
Performance Audit Division



State of Mississippi

**From the Office of State Auditor
Phil Bryant**

A LIMITED REVIEW OF THE MISSISSIPPI LAND, WATER AND TIMBER RESOURCES ACT

Report # 74
August 8, 2003

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Honorable Billy McCoy, Chairman
Ways and Means Committee
House of Representatives
New Capitol
Jackson, MS

Dear Chairman McCoy:

As per your request, the Performance Audit Division of the Office of the State Auditor (OSA) performed a limited review of the Mississippi Land, Water and Timber Resources Act. OSA has completed said review and now submit this report for your review.

It is our hope the information in this report will be beneficial to you and other parties interested in the program.

Sincerely,

Phil Bryant
State Auditor



**Office of the
State Auditor of Mississippi
Phil Bryant**

Report #74
August 8, 2003

A Limited Review of the Mississippi Land, Water and Timber Resources Act

At the request of the Chairman of the Ways and Means Committee of the Mississippi Legislature, the Performance Audit Division of the Office of the State Auditor (OSA), conducted a limited review of the Mississippi Land, Water and Timber Resources Act (Act).

The Mississippi Legislature in the 2000 Extraordinary Session, created the Mississippi Land, Water and Timber Resources Board (Board) for the purpose of administering the Act. The Board was also created to assist the Mississippi agricultural industry in the development, marketing, production, and distribution of agricultural products, and to provide for the powers and duties of the Board.

We reviewed the statutes establishing the Board and the policies and procedures promulgated by the Board for the administration of the Act. As a result of this review we noted the following:

The more complicated the project the greater the need for experts to advise the Board in their considerations of proposals. Utilization of these experts would bring to the forefront issues that should be addressed at the beginning and would allow the Board to have better information on which to make its decisions.

We would also recommend that OSA be involved during the pre-planning stage of each project. At the Board's request OSA could work closely with experts or consultants to increase investment

efficiency while also conducting compliance monitoring.

Consideration should be given to the method of distribution of funds authorized for a project when the proposal calls for private investment. For example, if the Board authorizes funds equal to one-half of the project with private investment making up the other half, the funds should be disbursed in the same manner.

The enabling legislation did not provide for additional staffing of the Board but allows the use of personnel from other agencies to carry out the duties of the Board. Confusion currently exists as to the method of monitoring said projects. The Board has indicated that they plan to address project monitoring with periodic onsite visits and reviews of activities that have been completed. OSA believes the Board should consider requesting an audit by OSA with the objective of monitoring the terms of the Agreement between the Board and the applicant for each individual project. Such an audit by OSA in addition to such other monitoring that the Board desires such as onsite visits, mentioned above, would effectively assure that projects approved under the Act are beneficial to Mississippi and are functioning in compliance with Agreement terms. The absence of such monitoring could result in loss of internal controls and a lack of contractual compliance.

As of July 2003, the Board has authorized projects in the amount of \$21,621,305.00.

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Introduction

Purpose

The Chairman of the House Ways and Means Committee of the Mississippi Legislature requested the Office of the State Auditor (OSA) to conduct a limited review of the Mississippi Land, Water and Timber Resources Act (Act). The purpose of this review was to summarize information regarding the Act for the review of the Legislature and other interested parties.

The limited review will:

- provide background information on the current laws governing the Act;
- provide information on the role of the Mississippi Land, Water and Timber Resources Board (Board); and
- evaluate policies and procedures established by the Board.

Scope

The scope of the limited review included a review of state statutes, program regulations, Board minutes, and projects authorized by the Board.

Method

In conducting the review, the OSA performed the following procedures:

- reviewed applicable state statutes;
- summarized information on the number and dollar amount of projects reported by the Board;
- reviewed policies and procedures established by the Board;
- reviewed appropriate records and documentation; and
- interviewed appropriate personnel.

Background

Legislative Authority

Section 69-46-1, Mississippi Code of 1972, Annotated, established the "Mississippi Land, Water and Timber Resources Act".

Section 69-46-3, Mississippi Code of 1972, Annotated, created the Mississippi Land, Water and Timber Resources Board to assist the Mississippi agricultural industry in the development, marketing, manufacture, production, and distribution of agricultural products, and to provide the powers and duties of the Board. It requires the Executive Director of the Mississippi Development Authority (MDA) and the Commissioner of the Mississippi Department of Agriculture and Commerce (MDAC) to serve as Co-Chairmen of the Board. It also sets the meeting and voting requirements for the adoption of any actions taken by the Board. The enacting legislation did not provide for any staff for the Board. However, this section provides that *“the Board may utilize the services, facilities and personnel of all departments, agencies, offices and institutions of the State, and all such departments, agencies, offices and institutions shall cooperate with the Board in carrying out the provisions of such act”*.

Section 69-46-5, Mississippi Code of 1972, Annotated, establishes the powers and duties of the Board.

“The Board shall have the following powers and duties:

- (a) To develop marketing plans and opportunities for independent farmers in Mississippi;*
- (b) To encourage the commercialization of new agricultural technology businesses;*
- (c) To initiate the development of processing facilities for Mississippi agricultural commodities;...”*

Section 69-46-7, Mississippi Code of 1972, Annotated, established the Mississippi Land, Water and Timber Resources Fund.

“The Mississippi Land, Water and Timber Resources Board may accept and expend funds appropriated or otherwise made available by the Legislature and funds from any other source in order to carry out the provisions of the Mississippi Land, Water and Timber Resources Act. Such funds shall be deposited into a special fund hereby established in the State Treasury, to be known as the "Mississippi Land, Water and Timber Resources Fund...”

Composition and Duties of the Board

The Board is required to meet at least once every calendar quarter by call of the Co-Chairmen with a majority of the members constituting a quorum. The Board files an annual report with the Governor, Secretary of the Senate, and the Clerk of the House of Representatives not later than December 1 of each year. Recommendations are made for any legislation necessary to accomplish the purposes of the Act.

The Board may accept and expend funds appropriated or otherwise made available by the Legislature and funds derived from other sources in order to carry out the provisions of the Act. Unexpended funds derived from bond proceeds and or private funds, or both, and interest earned from these amounts do not lapse into the State General Fund. All other unexpended amounts lapse into the State General Fund at the end of the fiscal year.

Upon approval of a project, an agreement is executed by and between the Board and each entity receiving assistance from the program. Closing documents are executed prior to disbursement of funds. MDA and the Board Attorney prepare necessary documents and allocate funding as directed by the Board. Funds are disbursed on a reimbursement or a services-rendered basis. Project recipients submit requisition requests on forms available from MDA. The Screening/Finance Committee (Committee) considers and acts on the requests. When and if defaults occur, the Board may seek repayment to the State of any loan, grant, or other contract under the program or pursue any other remedy available at law or in equity.

Currently the Board is made up of the following members:

Mississippi Land, Water and Timber Resources Board

Appointed by Statute

The Chairman of the
Senate Agriculture Committee Honorable Joseph Stogner

The Chairman of the
House of Representatives Agriculture Committee Honorable Steve Holland

The Chairman of the
Senate Forestry Committee Honorable Billy Harvey

The Executive Director of the
Mississippi Development Authority Mr. J. Stephen Hale

The Commissioner of the
Mississippi Department of Agriculture and Commerce Lester Spell, Jr., DVM

The President of the
Mississippi Farm Bureau Federation Mr. David Waide

The Director of the Cooperative Extension Service at
Mississippi State University Dr. Joe McGilberry

Professor at
Alcorn State University Dr. Gwendolyn Boyd

The Director of the Agricultural Finance Division of the
Mississippi Development Authority Mr. Chance Carter

The Director of the Agricultural Marketing Division of the
Mississippi Department of Agriculture and Commerce Mr. Roger Barlow

The Executive Director of the
Mississippi Forestry Commission Mr. James Sledge

Appointed by the Governor

Three individuals who are active producers of Mississippi land, water, or timber commodities (one from each Supreme Court District)...

1st District Mr. Joe Gustavis

2nd District Mr. Derrick Dahl

3rd District Vacant

Funding

Act

Currently, funding for the Mississippi Land, Water and Timber Resources Act has come from bonds authorized by the Mississippi Legislature. However, when individual projects are initiated, the Board has the option to require additional funding from the applicant.

Bonds Authorized:

\$ 10,000,000.00	(2001)
+ 18,000,000.00	(2002)
\$ 28,000,000.00	(Total Amount 2001 & 2002)

Bonds Issued:

\$ 10,000,000	(2001)
+ 6,000,000	(2002) (With Balance of \$12,000,000)
\$ 16,000,000	(Total Amount of Bonds Issued to Date)

Individual Projects

Application

Applications are available at the MDAC or the MDA. Applicants may be required to provide financial information, both business and personal, and any other information directly or indirectly related to their project.

Review and Approval

Upon receipt, the application will be given to the Committee who will review the project. The Committee will consider whether the project qualifies under the Act, meets the criteria of the program, and is a beneficial and effective allocation of program funds. The key to approval is making the determination that the project will increase the value of the products already being produced in the State (Value Added). Examples of criteria established by the Board follow:

- Promote the marketability of Mississippi agricultural products.
- Assist in the development of marketing plans and business opportunities for independent farmers in the State.
- Encourage commercialization of new agricultural technology businesses.
- Initiate the development of a processing facility for Mississippi agricultural commodities.
- Promote and initiate the development of alternative energy strategies, applied research technologies and commercialization enterprises that focus on Mississippi's natural resources.

The project must offer viability for success with the necessary experience and managerial expertise to justify the investment.

As part of this review process the Committee will review project plans, documents, assessments of the viability of the project, and in the case of loans or guaranteed loans, whether the expenditure of the funds will provide sufficient cash flow to repay the loans.

Upon recommendation from the Committee, the project will be submitted to the Board for consideration. The applicant will be notified and given an opportunity to make a formal presentation to the Board. Upon Board approval, the terms and conditions of the assistance will be incorporated into a grant or loan agreement (Agreement).

Funding

The Board may provide funds to public and private entities through loans, grants, contracts, and any other manner the Board determines appropriate for the purposes of carrying out the provisions of the Act.

Upon approval of a project, an agreement will be executed by and between the Board and each entity receiving assistance under the program. All closing documents must be fully executed prior to disbursement of funds that are payable on a reimbursement or a services-rendered basis. Requisition forms, which must be submitted to receive funds, are available from MDA. Disbursements are administered by MDA and paid with approval from the Committee.

In the event of default under such agreement, the Board may seek repayment to the State of any loan, grant, or other contract under the program or pursue any other remedy available at law or in equity.

The following chart is a listing of projects authorized in the amount of \$21,621,305.00.

***Authorized Projects
as of March 2003***

USM Polymer (Forrest County)	\$1,000,000.00
MS Beef Processors (Yalobusha County)	\$5,000,000.00
MSU Forest Products Lab (Oktibbeha County)	\$1,000,000.00
MS Technology Alliance	\$849,750.00
Sylvester's (Winston County)	\$92,500.00
Georgia Pacific (Winston County)	\$648,305.00
Nichols Enterprises (Rankin County)	\$61,512.00
Intime (Bolivar County)	\$750,000.00
Consolidated Catfish (Humphreys County)	\$2,300,000.00
Williamson Poultry (Simpson County)	\$2,500,000.00
ATI Aeration (Bolivar County)	\$500,000.00
Agristar Flowers (Adams County)	\$89,600.00
Thames Research/USM	\$250,000.00
MS Natural Products (Covington County)	\$800,000.00
Indi-Bel (Sunflower County)	\$1,500,000.00
Sumrall Farms (Madison County)	\$66,500.00
Wayne County	\$304,630.00
TT & W Farm Products, Inc/Heartland Catfish (Humphreys County)	\$1,250,000.00
Yazoo Planters Gin Company (Yazoo County)	\$130,000.00
Rabbitman Farms (Marion County)	\$40,000.00
Church Hill Produce (Jefferson County)	\$110,000.00
Coast Transit Authority (Harrison County)	\$125,000.00
Mississippi Technology Alliance (Alternative fuel vehicles)	\$92,500.00
Mississippi Technology Alliance (Methane Gas capture)	\$697,422.00
Mississippi Technology Alliance (Alternative Energy)	\$876,915.00
Associated Physics (Rotary Hydrogen Burner)	\$586,671.00
Total Authorized	\$21,621,305.00

Compliance with Project

Project Approval

Once a project has been approved, the Board and applicant enter into an Agreement which outlines the method of funding for the project, specifying either grant or loan.

Disbursement

Prior to the disbursement of funds, a requisition form is prepared and forwarded to MDA for review. MDA submits the requisition to the Committee for consideration and approval on a monthly basis. It does not appear that when a project has multiple funding sources that there is a policy for the distribution of funds on a percentage basis consistent with those sources.

Monitoring

The enabling legislation did not provide for additional staffing of the Board but allows the use of personnel from other agencies to carry out the duties of the Board. Confusion currently exists as to the method of monitoring said projects. The Board has indicated that they plan to address project monitoring with periodic onsite visits and reviews of activities that have been completed. OSA believes the Board should consider requesting an audit by OSA with the objective of monitoring the terms of the Agreement between the Board and the applicant for each individual project. Such an audit by OSA in addition to such other monitoring that the Board desires such as onsite visits, mentioned above, would effectively assure that projects approved under the Act are beneficial to Mississippi and are functioning in compliance with Agreement terms. The absence of such monitoring could result in loss of internal controls and a lack of contractual compliance.

Findings, Recommendations, and the Board's Response

Project Review and Approval

Finding

During our review of this program, we were asked to be a part of meetings that involved one of the projects approved by the Board. This project required a significant investment by the State, both directly and indirectly. In the spring of 2002 the Board approved a grant in the amount of \$5,000,000 based in part on the representation of the grantee. In March 2003 the grantee increased the original estimate of total project cost from \$26,290,536 to \$31,964,794 an increase of \$5,674,258 or 22%.

A consultant was hired in March 2003 to review the project and to determine the total cost to build a facility which would meet the estimates given and comply with requirements of the targeted buyers of the product. Estimated costs increased as a result of the projections of the consultant from the beginning estimate of \$26,290,536 to \$42,969,904 an increase of \$16,679,368 or 63%.

Recommendation

A basis for receiving funds is that the project must offer viability for success with the necessary experience and managerial expertise to justify the investment. While it appears the grantee had the necessary proficiency to manage the facility built with these funds, he was not as experienced as originally thought in constructing one. The more complicated the project the greater the need for experts to advise the Board in their considerations of proposals. While the cost of these experts will in all probability be high, the benefit received will be worth it. By utilizing these experts early on, many of the problems and issues that have come up over a year into the project would have been addressed at the beginning. This would have allowed the Board to have better information on which to make its decisions.

We would also recommend that OSA be involved during the pre-planning stage of each project. At the Board's request OSA could work closely with experts or consultants to increase investment efficiency while also conducting compliance monitoring.

The Board's Response

Regarding the recommendation, the Board discussed the utilization and involvement of experts on more complicated projects. Furthermore, the Board voted to request that OSA staff be present at committee and board meetings to assist in the evaluation of proposed projects. The Board would like to have OSA's assistance in the project monitoring process.

Funding

Finding

Policy has not been established determining the method of distribution of the funds granted when there is multiple funding streams.

Recommendation

Consideration should be given to the method of distribution of funds authorized for a project when the proposal calls for private investment. For example, if the Board authorizes funds equal to one-half of the project with private investment making up the other half, the funds should be disbursed in the same manner.

The Board's Response

Regarding the recommendation under “funding” and in LWT projects, which specify equity infusion by an applicant, the Board discussed the requirement that all equity be infused by applicant prior to any disbursement of LWT funds.

Monitoring

Finding

The enabling legislation did not provide for additional staffing of the Board but allows the use of personnel from other agencies to carry out the duties of the Board. Confusion currently exists as to the method of monitoring said projects. The Board has indicated that they plan to address project monitoring with periodic onsite visits and reviews of activities that have been completed.

Recommendation

OSA believes the Board should consider requesting an audit by OSA with the objective of monitoring the terms of the Agreement between the Board and the applicant for each individual project. Such an audit by OSA in addition to such other monitoring that the Board desires, such as onsite visits mentioned above, would effectively assure that projects approved under the Act are beneficial to Mississippi and are functioning in compliance with Agreement terms. The absence of such monitoring could result in loss of internal controls and a lack of contractual compliance

The Board's Response

Regarding the recommendation under “monitoring” the Board voted to request that OSA staff be present at committee and board meetings to assist in the evaluation of proposed projects. The Board would like to have OSA's assistance in the project monitoring process.